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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, v. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No.: 2:06-cv-323-LDG-RJJ **ORAL ARGUMENT REQUESTED**

PLAINTIFF 1ST TECHNOLOGY LLC'S OPPOSITION TO DEFENDANT IQ-LUDORUM PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) OR FOR A MORE DEFINITE STATEMENT

Plaintiff 1st Technology LLC, by and through its counsel of record HUTCHINSON & STEFFEN, LLC, hereby files this Opposition to IQ-Ludorum PLC's Motion to Dismiss for Lack of Personal Jurisdiction, or in the alternative, to Dismiss for Failure to State a Claim or for a More Definite Statement. This Opposition is based on the attached Memorandum of Points and Authorities, the Exhibits attached hereto, and the papers and pleadings on file herein

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in this case. Pursuant to LR 78-2, Plaintiff 1st Technology LLC, requests oral argument of this matter.

DATED this 21st day of August, 2006.

Respectfully Submitted,

L K Rath

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MEMORANDUM OF POINTS AND AUTHORITIES

Although it has customers who use IQ-Ludorum PLC's ("IQL") infringing technology within Nevada, IQL has moved this Court to dismiss 1st Technology LLC's ("1st Technology") complaint against it based on lack of personal jurisdiction. IQL has also moved this Court to dismiss 1st Technology's complaint based on an alleged failure to state a claim upon which relief may be granted, as well as an alleged lack of specificity, even though 1st Technology's complaint provides specificity beyond that required by notice pleading and satisfies all other applicable federal rules. This Court should deny all of IQL's motions.

I. THE COURT HAS PERSONAL JURISDICTION OVER IQL

This Court can exert personal jurisdiction on IQL. IQL provides its infringing software to end-users throughout the United States, including in this judicial district. IQL's software is available to Nevada residents through various IQL customer websites. Notably, IQL offers no alternative forum in the United States where it would acknowledge jurisdiction for the enforcement of 1st Technology's United States patent rights.

In order to establish that personal jurisdiction over IQL is proper, 1st Technology must show "that (1) Nevada's long-arm statute confers personal jurisdiction over [IQL]; and (2) that the exercise of jurisdiction comports with the constitutional principles of due process." *Rio Prop., Inc. v. Rio Intl. Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (affirming lower court's finding of personal jurisdiction over nonresident Internet gambling business). Nevada's long-arm statute permits jurisdiction "on any basis not inconsistent with the constitution of this state or the Constitution of the United States." Nev. Rev. Stat. Ann. § 14.065 (LEXIS 2006). To meet the requirements of due process under the Constitution, 1st Technology mush show only that IQL has the minimum contacts with Nevada "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

To establish specific *in personam* jurisdiction over IQL, 1st Technology must allege facts which, if true, would show that the following three-part test is met: "(1) [IQL] must have performed some act or consummated some transaction with the forum by which it purposefully availed itself of the privilege of conducting business in Nevada; (2) [1st Technology]'s claims must arise out of or result from [IQL]'s forum-related activities; and (3) the exercise of jurisdiction must be reasonable." *Rio Prop., Inc.*, 284 F.3d at 1019 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Failing a finding of specific *in personam* jurisdiction, the court may still exercise general jurisdiction over IQL should 1st Technology allege facts which, if true, would show that IQL has "such continuous and systematic contacts with the forum that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." *Reebok Int'l Ltd. V. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995) (citing *Core-Vent v. Nobel Indus. AB*, 11 F.3d 1482, 1485 (9th Cir. 1993)).

Although 1st Technology bears the burden of establishing that jurisdiction over IQL exists, 1st Technology need only make a prima facie showing of jurisdiction to defeat IQL's motion to dismiss. *Rio Prop., Inc.*, 284 F.3d at 1019. In determining whether 1st Technology has met this burden, uncontroverted allegations in 1st Technology's complaint must be taken as true, and conflicts between the facts contained in the parties' affidavits must be resolved in 1st Technology's favor. *Id.* 1st Technology's present response to IQL's motion to dismiss is based solely on publicly available information, all of which portrays a picture different from that suggested by IQL's declarant, Mr. Tony Norris. While 1st Technology believes that even this limited record establishes the propriety of this Court's exercise of personal jurisdiction over IQL, 1st Technology acknowledges that some limited discovery could assist the Court in determining the presence of personal jurisdiction. Therefore, in the event that the Court is inclined to grant IQL's motion to dismiss based on this limited record, 1st Technology requests the opportunity to take discovery directed solely to the issues raised in IQL's motion.

A. The Court Has Specific Jurisdiction Over IQL

The Court has specific jurisdiction over IQL. Each of the three prongs of the Ninth Circuit's test for specific jurisdiction is fulfilled in the present case.

1. IQL Has Purposefully Availed Itself Of The Privilege Of Conducting Business In Nevada

First, "[t]he purposeful availment requirement ensures that a nonresident defendant will not be haled into court based upon random, fortuitous, or attenuated contacts with the forum state." *Rio Prop., Inc.*, 284 F.3d at 1019; See *Burger King*, 471 U.S. at 475. The Ninth Circuit has held that the court lacked specific jurisdiction over a Florida website advertiser because "something more" was required beyond the "essentially passive home page," which was not interactive, and was not used to conduct business. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-19 (9th Cir. 1997). In contrast to the court's decision in *CyberSell*, IQL's customer websites are highly interactive, providing IQL's infringing software to end-users throughout the United States, including those residing in Nevada. Each Nevada end-user represents a separate act of infringement (and a separate business transaction) induced and participated in by IQL in Nevada. Because IQL's contacts with Nevada can hardly be described as "random," IQL meets the first factor supporting personal jurisdiction.

The only objection which IQL voices to the Court's exercise of specific jurisdiction over IQL is that "it is clear from the Norris Declaration that IQL has never made, sold, licensed or developed any software product." (IQL's Motion at p.6). Several of the statements made by IQL's declarant, however, are controverted by information about IQL which is publicly available. For example, contrary to the statements of Mr. Norris, the following representations with respect to IQL have been made to the public:

- IQL sells gaming software and real-time payment services to online businesses seeking to outsource mission critical software that is outside their core expertise. (Exhibit A, Company Overview, www.iq-l.com, accessed August 15, 2006).

- IQL's B2B e-Gaming Infrastructure Group sells real-time gaming software to leading e-gaming operators. [IQL] has a full range of gaming products including a full casino suite, blackjack, slots, poker, racebook and sportsbook software. [IQL's] products are used by some of the leading Internet gaming companies worldwide. (Exhibit A, Company Overview, www.iq-l.com, accessed August 15, 2006).

- IQL is a pioneer in online gaming. (Exhibit B, History/Values, www.iq-l.com, accessed August 15, 2006).

- IQL provides wagering software solutions to the online gaming industry. (Exhibit C, Overview of IQ-Ludorum, http://online.casinocity.com/software/software.cfm?Id=3716, accessed August 15, 2006).

- IQL has a suite of internet gaming software, and engages in the sale of such software. (Exhibit D, April 20, 2006, IQ-Ludorum News Announcement, www.iq-l.com, accessed August 15, 2006).

- IQL develops, markets and installs software that enables operators to offer online gaming facilities to their customers with a high degree of functionality, flexibility, user friendliness and speed. (Exhibit D, April 20, 2006, IQ-Ludorum News Announcement, www.iq-l.com, accessed August 15, 2006).

- IQL software is trusted by some of the most prominent gaming companies on the internet. (Exhibit E, June 29, 2006, IQ-Ludorum News Announcement, www.iq-l.com, accessed August 15, 2006).

- IQL is a global provider of software solutions primarily to the digital gaming industry. (Exhibit F, Finance Overview of IQ-Ludorum, http://finance.google.com/finance?cid=668917, accessed August 15, 2006).

- IQL is the number one provider of casino solutions to the internet gaming market. (Exhibit G, Overview of IQ-Ludorum, www.casino vendors.com/VendorPage.cfm/89096.html, accessed August 15, 2006).

- IQL's software allows customers to exploit all online gaming opportunities from a single platform delivering significant competitive advantages in numerous areas. (Exhibit G, Overview of IQ-Ludorum, www.casino vendors.com/VendorPage.cfm/89096.html, accessed August 15, 2006).

These representations, the majority of which have been generated by IQL itself, certainly do not demonstrate (as IQL's declarant would have the Court believe) that "that IQL has never made, sold, licensed or developed any software product." (See IQL's Motion at Exhibit A, Norris Declaration ¶¶ 16-18). Given the controverted testimony of Mr. Norris, it would be improper for the Court to grant IQL's motion to dismiss. See *Rio Prop., Inc.*, 284 F.3d at 1019.

It also bears mentioning that 1st Technology's ability to provide the Court with further evidence of IQL's contacts with Nevada is presently limited by the decision of many entities in the online gaming industry to suspend their United States product offerings in response to a recent federal indictment. For example, an article discussing what is represented to be "IQ-Ludorum Gaming News" provides that BETonSPORTS.com has temporarily discontinued the provision of all of its United States facing services, including its online casino and poker offerings. (Exhibit H, Dominic Walsh, *BetOnSports Forced to Close Down Poker and Casino Websites*, July 20, 2006, TIMES ONLINE, IQ-Ludorum Gaming News, www.globalgaming news.com/ news igaming/igs-iq-ludorum.php, accessed August 15, 2006). The federal indictment against BETonSPORTS specifically names IQL as an entity whose services have benefited the goals of BETonSPORTS, with one of those goals being to "maximize the number of individuals residing in the United States who opened wagering accounts and gambled on casino-type games" offered by websites such as BETonSPORTS.com. (Exhibit I, Case No. 4:06-cr-337CEJ, United States District Court for the Eastern District of Missouri, Docket #2, Indictment at ¶¶ 17-20). It is clear that the United States government believes that personal jurisdiction exists within the United States over companies such as BETonSPORTS based upon their online gaming services. IQL is equally subject to such jurisdiction, as IQL purposefully makes its software products available for download to residents throughout the United States, including residents of Nevada.

While 1st Technology normally is able to capture screen images from IQL customer websites such as BETonSPORTS.com which provide evidence of Nevada residents using IQL's infringing software, any current attempt to access such websites is met with the following greeting:

> IN LIGHT OF COURT PAPERS FILED IN THE UNITED STATES, THE COMPANY HAS TEMPORARILY SUSPENDED THIS FACILITY PENDING ITS ABILITY TO ASSESS ITS FULL POSITION. DURING THIS PERIOD NO FINANCIAL OR WAGERING TRANSACTIONS CAN BE EXECUTED. FURTHER INFORMATION WILL BE POSTED ONCE THE COMPANY IS IN A POSITION TO DO SO. – The BETonSPORTS.com customer support team.

(Exhibit J, www.betonsports.com, accessed August 15, 2006). In lieu of this message such as this one, access to the customer websites which offer IQL's infringing software is presently prohibited. Clearly, however, IQL has been providing such services and software previously – and that activity included operating the infringing systems. As discussed below, if the Court is inclined to grant IQL's motion based upon the limited record presently available, 1st Technology requests the opportunity to take discovery directed solely to the jurisdictional issues raised by IQL.

2. 1st Technology's Claim For Patent Infringement Arises Out Of IQL's Activities In Nevada

Second, the claim must be one that arises out of or relates to the defendant's forum-related activities. *Rio Prop., Inc.*, 284 F.3d at 1019; See *Burger King*, 471 U.S. at 475. 1st Technology's claim of patent infringement arises directly from the gaming-software provided by IQL to its customer's in the online gaming industry, with such software subsequently being downloaded by end-users throughout the country, including those residing in Nevada. The exact demographics associated with IQL's end-user population could easily be determined through targeted discovery. "To determine whether a claim arises out of forum-related activities, courts apply a 'but for' test." *Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001). Were IQL not providing its software to gaming industry customers, end-users would not be able to download IQL's software from the customer websites, and there would be no basis for 1st Technology's claim of patent infringement. The "but for" test is satisfied, since it is clear that 1st Technology's claim arises as a result of IQL's conduct in Nevada, among other forums across the United States. IQL therefore meets the second factor supporting personal jurisdiction.

3. Jurisdiction Over IQL In Nevada Is Reasonable

Third, the exercise of jurisdiction must be reasonable, or comport with "fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316. There is a presumption that jurisdiction is reasonable so long as the first two prongs of the specific jurisdiction test have been met. See *Shwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (stating that the plaintiff bears the burden of satisfying the first two prongs of the specific jurisdiction test and that, "[i]f the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable"). Although IQL has failed to mount an argument as to the reasonableness of the State of Nevada exercising jurisdiction over IQL, 1st Technology will undertake the burden of outlining the relevant issues in this analysis.

Courts consider seven factors to whether the exercise of jurisdiction is reasonable:

> (1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Rio Prop., Inc., 284 F.3d at 1019; See *Core-Vent*, 11 F.3d at 1488.

1. *Purposeful Injection*: As discussed at length above, IQL has purposefully injected itself into Nevada by providing IQL customers with software products which end-users located within Nevada subsequently download and use, thereby infringing 1st Technology's patent rights. This factor favors jurisdiction over IQL in Nevada.

2. *Burden on the Defendant*: IQL has failed to delineate any burden placed on it by being sued in Nevada. Any burden that does exist for IQL in Nevada would be the same in any other district court throughout the United States, and IQL does not acknowledge the propriety of jurisdiction in any other forum. Even should such a burden be assumed, "unless such inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justification for the existence of jurisdiction." *Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991). Significantly, in modern litigation, almost all activities save the

trial itself take place at the locations selected by the parties, rather than in the locality of the Court. This factor favors jurisdiction over IQL in Nevada.

3. *Conflict with Foreign State's Sovereignty*: United States courts have the greatest interest in adjudicating claims for infringement of United States patents for acts of infringement that occur in the United States. A court of the United Kingdom, or other foreign court, would be extremely ill-suited to resolve disputes arising under United States patent law, and, indeed does not even have jurisdiction to resolve disputes regarding United States patents. This case arises from 1st Technology's enforcement of its United States patent. Therefore, there are no concerns regarding the sovereignty of the United Kingdom or any other foreign country. This factor favors jurisdiction over IQL in Nevada.

4. *Forum State Interest*: Nevada has a strong public policy interest in regulating and managing the pursuit of gaming activity within Nevada, including Internet-based activity, and including any patent infringement which takes place within Nevada. No other district would be preferable. This factor favors jurisdiction over IQL in Nevada.

5. *The Most Efficient Judicial Resolution of the Controversy*: This prong deals with "the efficiency of the forum, particularly where the witnesses and evidence are likely to be located." *Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 129 (9th Cir. 1995) (citations omitted). Three lawsuits regarding the patent-in-suit have been previously resolved in Nevada, and been resolved in a highly efficient manner. In addition, "modern advances in communications and transportation have significantly reduced the burden of litigating in another country." *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988). Since there is no significant benefit to any other United States forum (and IQL has not suggested a United States forum where it would agree to proceed), this factor favors Nevada,

whose courts are familiar with 1st Technology and the patent-in-suit.

6. *Importance of Forum to Plaintiff*: 1st Technology has counsel in Nevada who is familiar with this matter and has chosen Nevada as the forum in which to proceed. Although there is no requirement that 1st Technology reside within this judicial district, 1st Technology is also in the process of becoming incorporated in Nevada. This factor is at least neutral, and tends to favor jurisdiction over IQL in Nevada.

7. *Unavailability of Alternate Forum*: If 1st Technology cannot bring suit against IQL in Nevada, it is questionable that 1st Technology will be able to proceed in another United States forum. As a foreign corporation, IQL can be sued equally in any state with which it transacts business. Since Nevada is a prime market for online gambling, it stands to reason that if the transactions of business in Nevada are not sufficient to grant jurisdiction, it would be difficult for 1st Technology to seek jurisdiction over IQL in another forum. IQL's motion goes to great lengths to explain why Nevada is an improper forum, but fails to indicate a single other United States court that would be a proper alternative forum. This factor favors jurisdiction over IQL in Nevada.

Balancing these seven factors, it is clear that IQL has not, and for that matter, cannot demonstrate that this Court's exercise of jurisdiction over IQL is unreasonable. IQL is therefore not entitled to dismissal for lack of personal jurisdiction pursuant to Rule 12(b)(2). The Court should deny IQL's motion to dismiss.

B. The Court Also Has General Jurisdiction Over IQL

To establish general *in personam* jurisdiction, IQL "must have sufficient contacts to 'constitute the kind of continuous and systematic general business contacts that approximate physical presence.'" *Fisher v. Prof'l Compounding Ctrs. of Am., Inc.*, 318 F. Supp. 2d. 1046, 1050 (D. Nev. 2004) (quoting *Glencoe Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114 (9th Cir. 2000)). The degree to which the defendant solicits or engages in business in the state, whether or not the defendant makes sales and if the defendant serves the state's markets are among the factors the court may consider in making this determination, although lists such as these are to be illustrative rather than limiting. *Id.*; See also *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984) (focusing "upon the 'economic reality' of the defendants' activities rather than a mechanical checklist"). Important in recent Ninth Circuit findings of no general jurisdiction over nonresident Internet businesses was that the websites were "'passive', *i.e.*, consumers cannot use it to make purchase." *Bancroft & Masters, Inc. v. Augusta Natl. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000); *Cybersell, Inc.*, 130 F.3d at 419.

As described above, the IQL customer websites which offer IQL's infringing software are not passive, but instead, create a highly interactive environment where business is conducted with Nevada clients. The involvement of companies such as IQL in the Nevada gaming marketplace affects the state's markets. (Exhibit K, Liz Benston, *Nevada Players Ante Up Online*, LAS VEGAS SUN, April 15, 2005). Even the recent federal indictment against BETonSPORTS makes this clear. (Exhibit I, Indictment at ¶17). IQL's contacts are therefore part of a "consistent and substantial pattern of business relations." *Theo Davies & Co. v. Republic of the Marshall Islands*, 174 F.3d 969, 975 (9th Cir. 1998); see also *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

The contacts that IQL has with Nevada through IQL's customer websites are also sufficient to grant general jurisdiction under the Ninth Circuit's "sliding scale" which grants jurisdiction if the party in question clearly does business over the internet and if those contacts are substantial or continuous and systematic. See *Cybersell*, 130 F.3d at 417-19; *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *Revell v. Lidow*, 317 F.3d 467, 470-71 (5th Cir. 2002). "At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper." *Zippo Mfg. Co.*, 952 F. Supp. at 1124 (citations omitted).

This is the exact situation presently before the Court. In order to communicate with online gaming companies, customers in Nevada (and throughout the United States) download IQL's software to engage in various casino-style games. Applying the sliding-scale test, IQL's contacts with Nevada are sufficient to confer general jurisdiction. Indeed, IQL's entire business model is predicated on its supply of highly interactive software designed to transact business over the internet:

> IQ Ludorum Plc sells gaming software and real-time payment services to online businesses (B2B) seeking to outsource mission critical software that is outside their core expertise.
>
> * * *
>
> IQL's B2B e-Gaming Infrastructure Group sells real-time gaming software to leading e-gaming operators. We have a full range of gaming products including a full casino suite, blackjack, slots, poker, racebook and sportsbook software. Our products are used by some of the leading Internet gaming companies worldwide.

(Exhibit A, Company Overview, www.iq-l.com, accessed August 15, 2006);

> IQL develops, markets and installs software that enables operators to offer online gaming facilities to their customers with a high degree of functionality, flexibility, user friendliness and speed.

(Exhibit D, April 20, 2006, IQ-Ludorum News Announcement, www.iq-l.com, accessed

August 15, 2006). The high degree of interactivity associated with today's virtual casinos websites so approximates physical presence in a casino that such websites are now competing with brick-and-mortar casinos directly for gaming revenue. (Exhibit K, Liz Benston, *Nevada Players Ante Up Online*, LAS VEGAS SUN, April 15, 2005). The technology which permits this life-like environment to be replicated online is the subject matter to which 1st Technology's patent is directed. General jurisdiction over IQL in Nevada is proper.

Lastly, this exercise of jurisdiction must be reasonable. The reasonableness test set out by the Ninth Circuit in *Amoco* for general jurisdiction is identical to the test for reasonableness of determining specific jurisdiction, which has been addressed above. *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848 (9th Cir. 1993). It bears repeating, however, that the burden is on IQL to present a compelling case that the assertion of jurisdiction is not reasonable. *Id.* at 851-852. Here, IQL simply cannot do so. IQL specifically induces and contributes to infringement in Nevada by transmission of and use of its software products. IQL's motion to dismiss should accordingly be denied.

C. IQL's Activities Are Not Separable From Those Of IQL's Subsidiaries

IQL also asserts that jurisdiction is not proper because according to its declarant, Mr. Tony Norris, it is IQL's subsidiaries (rather than IQL itself) which develop, market and sell the software which is the subject of 1st Technology's complaint. (IQL's Motion at pp. 7-8). In essence, IQL asserts that it is nothing more than a holding company. (Id.) As discussed above in section I.A.1, however, all of the evidence publicly available to 1st Technology suggests that this Court has jurisdiction over IQL itself. Indeed, not one of the public representations discussed above makes any mention of the activities of IQL's subsidiaries. (See section I.A.1 above). Rather, these representations provide that it is IQL which develops, markets and sells the software which infringes 1st Technology's patent. Jurisdiction over IQL is proper. Given the controverted testimony of Mr. Norris, it would be improper for the Court to grant IQL's motion to dismiss. See *Rio Prop., Inc.*, 284 F.3d at 1019.

As a general rule, if a parent and subsidiary are not really separate entities, the subsidiary's contacts with the forum may be imputed to the foreign parent corporation. *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001). Based upon its representations to the public, IQL at a bare minimum holds itself out to be the provider of the accused software, thereby making the activities of IQL's subsidiaries, whatever they may be, imputable to IQL itself. To the extent that IQL has alleged that its subsidiaries are truly the entities which engage in the development, marketing and sale of the accused software, 1st Technology, if necessary, requests leave to amend its complaint to add such subsidiaries as party defendants. The need to do so, however, can only be determined through limited discovery as discussed in greater detail below. Such discovery will either (1) confirm that the Court has jurisdiction over IQL (as 1st Technology believes), or (2) reveal the identity of the IQL subsidiary which develops, markets and sells the accused software.

D. Request For Limited Discovery

Given the nature of IQL's operations in Nevada, as well as the online gaming industry's reaction to recent federal indictments, specific additional information on the totality of the degree to which IQL transacts business in Nevada is understandably difficult to come by. While 1st Technology believes the use by Nevada residents of IQL's infringing products is sufficient to show that this Court's exercise of jurisdiction is proper, should the court feel that additional or more specific facts be outlined, such as the number of IQL software downloads in Nevada, the court "may permit discovery to aid in determining whether it has *in personam*

jurisdiction." *Data Disc, Inc. v. Systems Tech. Assoc.'s, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977) (citing *Wells Fargo & Co., Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).

1st Technology requests, if the Court is inclined to grant IQL's motion, that 1st Technology be permitted to "pursue precisely focused discovery aimed at addressing matters relating to personal jurisdiction." *GTE New Media Serv.'s Inc. v. Bellsouth Corp.*, 199 F.3d 1343, 1352 (D.C. Cir. 2000) (allowing jurisdictional discovery to determine defendants' involvement in websites). 1st Technology's request for additional discovery merely seeks to provide further support for the already existing evidence, to assure that the proper IQL entity is named as a Defendant to this lawsuit, and to cross-examine IQL's declarant with respect to his contradiction of IQL's public statements and positions. Such discovery would encompass nothing more than a few highly directed document requests and interrogatories, and the brief deposition of IQL's declarant and/or a Rule 30(b)(6) witness.

II. 1ST TECHNOLOGY'S COMPLAINT STATES A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Relying upon the Federal Circuit's recent decision in the case of *NTP, Inc. v. RIM, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005), IQL contends that 1st Technology's complaint must be dismissed for failure to state a claim upon which relief may be granted. (IQL's Motion at p.8). While IQL argues that the holding of *NTP* requires all steps of a method claim to be performed within the United States, this holding ***does not*** apply to patent claims directed toward an apparatus or system:

> ***[T]he jury was properly presented with questions of infringement as to NTP's system claims*** containing the "interface" or "interface switch" limitation; namely, claim 15 of the '960 patent; claim 8 of the '670 patent; and claims 28 and 248 of the '451 patent. ***We reach a different conclusion as to NTP's asserted method***

> ***claims. Under section 271(a), the concept of "use" of a patented method or process is fundamentally different from the use of a patented system or device.***

NTP, 418 F.3d at 1317 (emphasis added).

In its complaint, 1st Technology alleges that IQL has previously and is presently infringing 1st Technology's United States Patent No. 5,564,001 ("the '001 patent"). (Exhibit L, Complaint at ¶5) (emphasis added). As the only basis for requesting that 1st Technology's complaint be dismissed, IQL represents to the Court that "all claims of the '001 patent are method claims." (IQL's Motion at p.8). At best, this statement is a mistake of fact on the part of IQL – at worst it is a misrepresentation to the Court. Not a single claim of the '001 patent is a method claim. (See Exhibit M, U.S. Patent No. 5,564,001). In fact, each and every claim of the '001 patent is directed toward a system. As just one example, claim 26 of the '001 patent recites in relevant part:

> 26. An interactive multimedia ***system*** for providing interactive multimedia information to a user over a communication network, ***the system comprising***:

(Id.) (emphasis added). Notably, 1st Technology specifically alleges in its complaint that IQL's ***software products*** infringe at least claim 26 of the '001 patent. (Exhibit L, Complaint at ¶¶ 5, 13). 1st Technology does not presently allege that any method or process practiced by IQL infringes the '001 patent. Nor would it even be sensible to make such an allegation, as the claims of the '001 patent indisputably do not address any method or process, whatever it may be. As such, there is no basis whatsoever to grant IQL's unfounded request to dismiss 1st Technology's complaint. The Court should accordingly deny IQL's motion.

III. 1ST TECHNOLOGY'S COMPLAINT SATISFIES THE REQUIREMENTS OF FEDERAL NOTICE PLEADING

1st Technology's complaint has adequate specificity for notice pleading. Under Rule

8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain nothing more than "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). The appendix to the Federal Rules of Civil Procedure sets out the following form as a guideline for pleading patent infringement:

> 1. Allegation of jurisdiction.
>
> 2. On May 16, 1934, United States Letters Patent No. XX were duly and legally issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.
>
> 3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.
>
> 4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement. Wherefore plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against defendant.

FED. R. CIV. P. Form 16. 1st Technology's complaint is at least as specific as Form 16, and comports entirely with the Federal Rules. In its complaint, 1st Technology alleges that IQL has previously and is presently making, using, selling, offering for sale and/or importing into the United States software products that infringe the '001 patent. (Exhibit L, Complaint at ¶5). As discussed above, 1st Technology even alleges a specific claim of the '001 patent that IQL is infringing. (Exhibit L, Complaint at ¶13).

IQL apparently takes exception to the fact that 1st Technology's complaint does not identify IQL's infringing software product(s) by name. (IQL's Motion at p.9). As stated in 1st Technology's complaint, the inventions of the '001 patent are used in many online gaming systems. (Exhibit L, Complaint at ¶11). IQL represents that it is a provider of real time gaming software to the online gaming industry. (Exhibit A, Company Overview, www.iql.com, accessed August 15, 2006). As such, IQL's infringing software products are more easily identified not by a specific product name, but rather by the identity of the customer who ultimately makes (or has made) the infringing IQL software available for download to the end-user.

For example, one of IQL's customers has been BETonSPORTS.com. (Exhibit N, July 28, 2003, Press Release, www.casinoworldnews.com/html/pr_viewo.php?pr_id=76, accessed August 15, 2006). Typically IQL customers simply inform the end-user (which in this case is the general public, including residents of Nevada) that the software which the customer uses is provided by IQL. There are dozens of IQL customers who use or have used IQL's casino gaming software, and therefore also contribute to IQL's infringement of the '001 patent. (Exhibit O, Index of Online Casinos According to Software Provider, http://wizardofodds.com /casinos, accessed August 15, 2006).

IQL's demand that 1st Technology identify IQL's infringing products with greater specificity is akin to a request for 1st Technology to recite IQL's customer list. 1st Technology cannot accurately complete such a task without first obtaining some form of discovery from IQL. Indeed, even IQL itself boasts of the broad demographics associated with its customer base:

> We are very proud of our existing customer base, ranging from billion dollar companies to small & medium size companies, located throughout the world.

(Exhibit P, Words From Our CEO President, http://www.iq-l.com, accessed August 15, 2006). The breadth of IQL's customer base does not, however, necessitate that 1st Technology must provide a more detailed pleading. Indeed, a "more extensive pleading of fact is not required because the Federal Rules of Procedure provide other devices besides pleadings that will serve to define the facts and issues and to dispose of unmeritous claims." 2 James Wm. Moore, et al., Moore's Federal Practice § 8.04[1] (3d ed. 1999).

In the present case, there is not a laundry list of 503 patent claims from 20 asserted patents to be applied to several hundred possibly infringing products, as in one of the cases relied upon by IQL. See, *In re Pabst Licensing GmbH Patent Litigation*, 2001 U.S. Dist. LEXIS 2255, *3-4 (E.D. La., Feb. 22, 2001). In another case cited by IQL, the court held that "dismissal for failure to comply with the requirements of Rule 8 is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Agilent Technologies, Inc. v. Micromuse, Inc.*, 2004 U.S. Dist. LEXIS 20723, *3 (S.D.N.Y., Oct. 19, 2004) (internal citations omitted). While the court in *Agilent* ultimately required a more detailed pleading from the plaintiff, the court distinguished itself from a decision where there "was a finite set of potentially infringing products under identified patents." *Id.* at *15 (distinguishing *Symbol Techs., Inc. v. Hand Held Prods.*, 2003 U.S. Dist. LEXIS 21002 (D. Del., Nov. 14, 2003).

The present case is distinguishable from those which IQL relies upon in support of its motion. 1st Technology has alleged infringement of a single patent. (Exhibit L, Complaint at ¶5). The software which IQL supplies to the online gaming industry, and ultimately to end-users, infringes the '001 patent. 1st Technology will, as part of ordinary discovery, provide IQL with claim charts showing the application of specific claims of the '001 patent to IQL's infringing software products. There is no necessity for additional pleading.

Moreover, to qualify for a Rule 12(e) motion, the complaint "must be so vague or ambiguous that the opposing party cannot respond to it, even with a simple denial as permitted by Rule 8(b), with a pleading that can be interposed in good faith or without prejudice to himself." Wright & Miller, Federal Practice & Procedure § 1376 at 311 (3d ed. 2004). 1st Technology's complaint fulfills the requirements of Rule 8 and is not so vague that it cannot be responded to by IQL in good faith. The Court should deny IQL's Rule 12(e) motion.

IV. CONCLUSION

For the foregoing reasons, 1st Technology respectfully requests that the Court deny IQL's motions (1) to dismiss for lack of personal jurisdiction, (2) to dismiss for failure to state a claim, and (3) for a more definite statement. If this Court is inclined to grant IQL's motion to dismiss for lack of personal jurisdiction, 1st Technology respectfully requests the opportunity to seek limited discovery for the purpose of providing further evidence that personal jurisdiction over IQL exists.

DATED this 21st day of August, 2006.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the 21st day of August, 2006, I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **PLAINTIFF 1ST TECHNOLOGY LLC'S OPPOSITION TO DEFENDANT IQ-LUDORUM PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) OR FOR A MORE DEFINITE STATEMENT** to the following counsel of record:

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